

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6760

IN THE MATTER OF:

Served August 5, 2002

Application of BMG LIMOUSINE AND)
JET SERVICE, LLC, to Acquire)
Certificate No. 515 from OAO)
CORPORATION, trading as BMG)
LIMOUSINE SERVICE)

Case No. AP-2002-53

Investigation of Acquisition of)
OAO CORPORATION, Trading as BMG)
LIMOUSINE SERVICE, by LOCKHEED)
MARTIN CORPORATION, and)
Unauthorized Operations of BMG)
LIMOUSINE AND JET SERVICE, LLC)

Case No. MP-2002-17

OAO CORPORATION, Trading as BMG)
LIMOUSINE SERVICE, Suspension)
And Investigation of Revocation)
of Certificate No. 515)

Case No. MP-2002-08

These cases are before the Commission to determine whether Certificate No. 515 shall be revoked or transferred to BMG Limousine and Jet Service, LLC.

I. INVESTIGATION

Our investigation reveals that BMG Limousine and Jet Service, LLC (respondent), has been engaged in a continuing violation of Commission Regulation No. 63-04. Regulation No. 63-04 provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission." Printouts obtained by the Commission from applicant's website, www.bmglimo.com, show that applicant has been holding itself out to perform flat-fare airport service and 10-passenger limousine service between points in the Washington Metropolitan Area Transit District from as early as February 2002 through as late as June 2002.¹ These services require a WMATC

¹ A printout from applicant's website obtained by the Commission on February 8, 2002, shows applicant offering "chauffeured transportation service located in the Washington DC Metropolitan area," including service in "Lincoln Stretch Limousines" to and from "National Airport" and "Dulles Airport." A printout from applicant's website obtained by the Commission on June 21, 2002, describes applicant's fleet as including "Black and White" "Stretch Limousine[s]" seating "8-10 Passengers." Another printout from applicant's website obtained by the Commission on June 21, 2002, shows applicant advertising hourly rates for service in sedans and limousines, including "10 Passenger"

certificate of authority. Applicant's website thus violates Regulation No. 63-04.

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.²

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.³ The term "willfully" does not mean with evil purpose or criminal intent.⁴ Rather, it means purposely or obstinately, with intentional disregard or plain indifference.⁵ It describes conduct marked by careless disregard.⁶ Employee negligence is no defense.⁷

Respondent is controlled by Cecile D. Barker. Mr. Barker controlled WMATC Carrier No. 515 from the time it acquired WMATC operating authority on May 4, 2000, until the time he sold his ownership interest in that carrier on December 7, 2001. His knowledge of the Compact and WMATC regulations may be attributed to respondent.

Because this is respondent's first offense, we will assess a forfeiture of only \$250.⁸

II. APPLICATION

BMG Limousine and Jet Service, LLC (applicant), seeks Commission approval to acquire Certificate No. 515 from OAO Corporation, trading as BMG Limousine Service (OAO).

Applicant is a Delaware limited liability company controlled by Cecile D. Barker. Mr. Barker controlled OAO at the time of applicant's formation on November 26, 2001, but subsequently relinquished control of OAO by selling all of his OAO shares to Lockheed Martin Corporation on December 7, 2001. Lockheed and OAO consent to and support the transfer of Certificate No. 515. Lockheed

limousines, and fixed fares between "Downtown DC," on the one hand, and "Ronald Reagan National" and "Washington Dulles Airport," on the other.

² Compact, tit. II, art. XIII, § 6(f)(i).

³ DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 (Dec. 20, 1993); O. Oluokun, Inc., t/a Montgomery County Limo, No. MP-93-43, Order No. 4225 (Dec. 16, 1993).

⁴ Order No. 4226; Order No. 4225.

⁵ Order No. 4226; Order No. 4225.

⁶ In re Capital Tours & Transp., Inc., t/a Suburban Airport Shuttle, No. MP-95-88, Order No. 4765 (Feb. 13, 1996).

⁷ Order No. 4226; Order No. 4225.

⁸ In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. MP-97-76, Order No. 5276 (Feb. 17, 1998).

⁹ In re V.I.P. Tours, Inc., & V.I.P. Tours, L.L.C., No. MP-01-98, Order No. 6577 (Mar. 20, 2002).

consents to the transfer of vehicles used by OAO in its passenger transportation operations.

Under Title II of the Compact, Article XI, Section 11(a), a person may not transfer a certificate of authority unless the Commission approves the transfer as consistent with the public interest. The public interest analysis includes a determination of the transferee's regulatory compliance fitness.¹⁰ A determination of compliance fitness is prospective in nature.¹¹ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.¹² Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.¹³

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹⁴

The willful and continuing nature of the violation, the fact that it occurred while the application was pending and applicant was the subject of two investigations, and the absence of any mitigating circumstances militates against a finding of compliance fitness at this time. Unless and until applicant ceases holding itself out to perform transportation requiring a WMATC certificate of authority, we cannot say that applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

Inasmuch as the primary insurance certificate on file for Carrier No. 515 expired during the course of these proceedings on March 22, 2002, and has not been replaced, and inasmuch as we are denying the application to transfer Certificate No. 515, we shall revoke Certificate No. 515 pursuant to Article XI, Section 10(c), of the Compact for Carrier No. 515's willful failure to comply with the Commission's insurance regulation, Regulation No. 58, as required by Article XI, Section 7(f), of the Compact.

THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-2002-53, MP-2002-08 and MP-2002-17 are hereby consolidated.

¹⁰ In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. AP-97-47, Order No. 5350 (June 2, 1998).

¹¹ In re Adventures By Dawn L.L.C., No. AP-99-68, Order No. 5837 (Mar. 14, 2000).

¹² Id.

¹³ Id.

¹⁴ Order No. 5837 at 5-6.

2. That BMG Limousine and Jet Service, LLC, shall cease advertising and holding itself out to perform transportation services requiring a WMATC certificate of authority.

3. That the Commission hereby assesses a civil forfeiture against BMG Limousine and Jet Service, LLC, in the amount of \$250 for knowingly and willfully violating Commission Regulation No. 63-04.

4. That BMG Limousine and Jet Service, LLC, is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

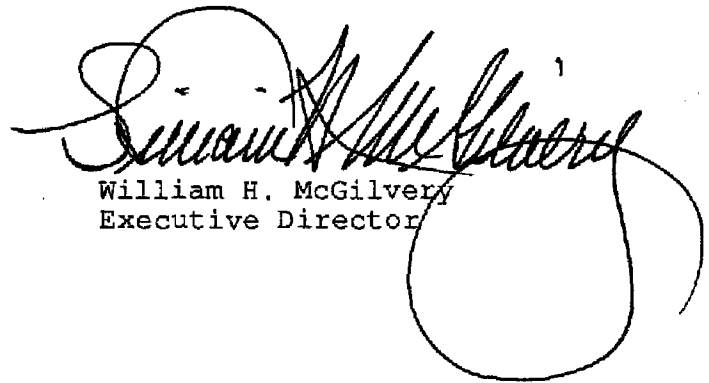
5. That the application of BMG Limousine and Jet Service, LLC, for Commission approval to acquire Certificate No. 515 from OAO Corporation, trading as BMG Limousine Service, is hereby denied without prejudice.

6. That Certificate of Authority No. 515 is hereby revoked.

7. That within 30 days from the date of this order applicant shall:

- a. remove from applicant's vehicles any and all identification placed thereon pursuant to Commission Regulation No. 61; and
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, LIGON, AND MILLER:



William H. McGilver
Executive Director